

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**CITY OF SALINA,**

**Plaintiff,**

**v.**

**CASE NO. 21-3179-SAC**

**CRAIG IVAN GILBERT,**

**Defendant.**

**MEMORANDUM AND ORDER**

This matter is before the court on a notice of removal filed by the defendant in two pending criminal actions in Saline County, Kansas. The notice, a 54-page filing, seeks to remove two criminal actions pending in the District Court of Saline County, Case Nos. 21-CRM-333 and 21-CRM-334.

Under 28 U.S.C. § 1443, a state criminal defendant may remove a state criminal case to a federal district court if the defendant "is denied or cannot enforce ... a right under any law providing for the equal civil rights of citizens of the United States". 28 U.S.C. § 1443(1). A criminal defendant qualifies for removal under that provision by meeting a two-pronged test: "First, the petitioner must show that the right upon which the petitioner relies arises under a federal law 'providing for specific civil rights stated in terms of racial equality.' Second, the petitioner must show that he has been denied or cannot enforce that right in the state courts." *Alabama v. Conley*, 245 F.3d 1292, 1295 (11<sup>th</sup> Cir. 2001) (quoting *Georgia v. Rachel*, 384 U.S. 780, 792 (1966)). In addition, the removal of state-court civil or criminal actions to

federal court is permissible where the action is against a federal officer, 28 U.S.C. § 1442, or a member of the armed forces, 28 U.S.C. § 1442a.

The present notice of removal does not meet these tests, as the defendant makes only vague allegations concerning his prosecution and does not allege that he is a federal officer or a member of the armed forces. Having reviewed the materials submitted in this matter, the court finds summary remand of the criminal actions to the state court is warranted.

IT IS, THEREFORE, BY THE COURT ORDERED that Case Nos. 21-CRM-333 and 21-CRM-334 are remanded to the state court.

**IT IS SO ORDERED.**

DATED: This 16th day of August, 2021, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge